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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/059,564	01/29/2002	Jeffrey A. Martin	WMMG 3545	7937
321	7590	06/11/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 06/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/059,564	Applicant(s) MARTIN ET AL.	
	Examiner Neil Levy	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/19/04
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 9-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 9-24 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Invention/species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

There was no FMC brochure attached.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims are to an optimum density, not defined.

In view of applicant's ~~remarks~~ remarks, it is not clear if optimum refers to 1.033, or some other number above 1.033. If other than 1.033, there is no identification in the claim, as to what constitutes the basis for determining optimum. The meets and bounds of the claim to an optimum density are indefinite and unclear, optimum is some number, indeterminate between 1.033 – 1.377, according to claims applicant's argument that one in the art would know optimum applies to best and most favorable results ~~by~~ the question – results in regard to what? Stability, attraction, convenience or?

Absent a competent document ~~presumably~~ presumably the FMC brochure – it is not clear what is meant by purified cellulose or how any other, microcrystalline, or otherwise processed cellulose differentiates it.

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We note that applicant fails to identify where in the specification purified cellulose, or optimal density, is defined. It would appear that rather than a composition; the optimization may be a process. At present one in the art of termite monitoring is left to guess at what composition is optimal, what is not.

Claims 1-6, 8 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Richardson et al 6416752.

The rejection of record is maintained. Richardson uses microcrystalline or purified cellulose, compressed into a tablet with termiticides with attractants – mushroom, example 1. Although density is not disclosed, optimization is, at bottom of col. 2, the baits are compressed into tablets to fit into termite bait station. At col. 3, top, the powdered form is optimal for use in fresh condition in bait stations.

In example 1, the particle size of 20-100 microns was optimal as feeding attractants over pine wood. There are many more measures of optimization possible; Here the instant composition, in powder, granule or tablet form of micro crystalline and purified cellulose is shown; optimized to monitor and control termites. Further; any change in density or form can be performed at the will of the artisan, to provide more or less dense tablets, in order to optimize handling by applicator, size for ready release upon termite feeding, of the powdered constituents, stability, resistance to termite feeding, in order to minimize particle or powder consumption, all within the scope of the feeding and attractancy, trails of Richardson.

Claim ~~18~~ rejected under 35 U.S.C. 103(a) as being unpatentable over Richardson et al 6416752 in view of Ninagawa et al 5096710.

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Richardson (above) tablets bait, but only states the composition may be compressed into tablets, resulting density or compression force unstated. Ninagawa also makes termite baits similar to Richardson of dextrin – a purified cellulose and with crystalline cellulose (col. 4, lines 4-65) using conventional procedures.

The baits are compressed with pressure of 10-500 kg/cm squared. The resulting tablets are 1.33g/cc (line 47-50), and are optimized to prevent cracking, a problem seem when attract materials are mixed with crystalline cellulose (col. 1, lines 48-60).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize compressed baits, to use any of recognized means, including those of Richardson, with particular density achieved as shown in normal tableting procedures, in order to optimize bait to control the target pest of concerns. Motivation to use Richardson is that of controlling termites. Motivation for Ninagwa combination, is that of controlling termites, with optimization of the bait characteristics. The particular ingredients are disclosed by Richardson, any compression pressures to provide non cracking baits meets.

There is no distinguishing disclosure of the instant composition as providing any unusual and/or unexpected results obtained since the prior art is well aware of the use of pheromones, foods, nutrients as attractant, with insecticides, in the control of insects. The selection of bait, nutrient and pheromones are result effective parameters chosen to obtain the desired insect control. The compression features and bait form are known by the Artisan.

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All the critical elements of the instant are disclosed. The amounts and, forms proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effects desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

Applicant has not provided any objective evidence of criticality, non-obvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by known art recognized methods to achieve improved fly control as is well known in the art.

Applicant's arguments filed on *2/1/64* have been fully considered but they are not persuasive. Applicant's arguments have been addressed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce Hess whose telephone number is 571-272-1525. The examiner can normally be reached on Monday thru Friday from 6:30 to 7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/LR
June 3, 2004

NEIL S. LEVY
PRIMARY EXAMINER